



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 27, 2004

Mr. Lance Beversdorff  
Staff Attorney  
Texas Youth Commission  
P.O. Box 4260  
Austin, Texas 78765

OR2004-0593

Dear Mr. Beversdorff:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 194971.

The Texas Youth Commission (the "commission") received a request for nine categories of information pertaining to the investigation of an incident involving the requestor, a former commission employee. You state that information responsive to items three, four, five, and six of the request, regarding disciplinary actions and the grievance at issue, will be provided to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

We begin by addressing the submitted documents and videotape relating to investigation number 03-1358. Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information that other statutes make confidential. Section 261.201 of the Family Code provides in part:

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<sup>1</sup> We note you have submitted representative samples of the type of information you seek to withhold pursuant to section 552.117 of the Government Code. We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201. The commission is authorized to conduct an investigation under chapter 261. *See* Fam. Code § 261.401(b) (state agency that operates, licenses, certifies, or registers facility in which children are located shall make prompt, thorough investigation of report that child has been or may be abused, neglected, or exploited in facility). The victim in investigation number 03-1358 was fifteen at the time of the incident at issue, and therefore was a child for purposes of chapter 261. *See* Fam. Code § 101.003(a) (“child” is generally defined as “a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes”). Based on your representations and our review, we determine that the submitted information relating to case number 03-1358 consists of files, reports, records, communications, working papers, and a videotape used or developed in an investigation made under chapter 261 of the Family Code. We note that the commission has adopted rules concerning investigations of alleged abuse, neglect, or exploitation. *See* Fam. Code § 261.409 (commission by rule shall adopt standards for investigation under Fam. Code § 261.401); 37 T.A.C. § 93.33. You indicate that pursuant to the commission’s rules, the requestor has a right of access to certain information concerning the investigation in this instance. You inform us that the commission has provided that information to the requestor, and you further advise that the commission’s rules do not permit the requestor to have access to the remainder of the investigation file at issue. We therefore determine that the submitted documents and videotape pertaining to investigation number 03-1358 are excepted from disclosure in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code as information made confidential by law.<sup>2</sup>

We next address your arguments respecting the submitted audio tape recording. You indicate that the tape recording pertains to two hearings held July 25, 2003 and August 19, 2003 concerning an allegation against a youth in the custody of the commission. You claim that

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<sup>2</sup> Based on this finding, we do not reach your other argument under section 552.101 with respect to the submitted videotape.

the tape recording is confidential under section 61.073 of the Human Resources Code. Section 61.073 provides:

The commission shall keep written records of all examinations and conclusions based on them and of all orders concerning the disposition or treatment of each child subject to its control. Except as provided by Section 61.093(c), these records are not public and are available only according to the provisions of Section 58.005, Family Code, and Chapter 61, Code of Criminal Procedure.

Hum. Res. Code § 61.073.<sup>3</sup> Section 58.005(a) of the Family Code provides that “[i]nformation obtained for the purpose of diagnosis, examination, evaluation, or treatment . . . of a child by [an agency] providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court” may only be disclosed to certain individuals under certain circumstances. You state that the submitted tape recording constitutes a record of an examination of the treatment of a child in the custody of the commission, and a record of an order concerning the disposition of the child. Section 58.005 of the Family Code does not authorize the release of the submitted information in this instance. Based on your representations and our review, we determine that the submitted audio tape recording is confidential under section 61.073 of the Human Resources Code and must be withheld in its entirety pursuant to section 552.101 of the Government Code.<sup>4</sup>

Finally, you contend that the home addresses of commission employees that appear in portions of the remaining submitted documents are excepted from disclosure under section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely elect to keep this information confidential pursuant to section 552.024. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the commission may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who elected to keep information confidential pursuant to section 552.024 prior to the date on which the request for this

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<sup>3</sup> As you acknowledge, section 61.073 was amended by the 78th Legislature. Section 4 of the amending legislation provides that the amended version of section 61.073 was effective on September 1, 2003, but further provides that a proceeding that occurred prior to that date is governed by the prior law, which is continued in effect for that purpose. *See* Act of June 21, 2003, 78<sup>th</sup> Leg., R.S., ch. 1294, §§ 1, 4, 2003 Tex. Sess. Law Serv. 4701. In this case, as the hearings at issue occurred prior to September 1, 2003, we consider your claim pursuant to the prior law.

<sup>4</sup> Based on this finding, we do not reach your other argument under section 552.101 with respect to this information.

information was made. Based on your representation that the employees at issue timely requested to keep their home addresses confidential, we determine that the commission must withhold the marked addresses pursuant to section 552.117(a)(1) of the Government Code.

In summary, the commission must withhold the submitted videotape and documents relating to investigation number 03-1358 pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The submitted audio tape recording must be withheld under section 552.101 in conjunction with section 61.073 of the Human Resources Code. The commission must withhold the marked addresses of commission employees pursuant to section 552.117(a)(1) of the Government Code. The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 194971

Enc: Submitted documents

c: Mr. Darrick W. Ervin  
17122 Gholson Road  
Waco, Texas 76705  
(w/o enclosures)